Annex 19

Summaries of Selected Cases on Code on Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary.)

ENVIRONMENT, TRANSPORT AND WORKS BUREAU ("ETWB")

Case No. OMB 2007/1985(I)

Access to information – wrongly rejecting a request for data – substantiated

Request for Data on Railway Suicide

In June 2006, the complainant, a university researcher, requested the then ETWB to provide information on incidents of suicide and suspected suicide along the Mass Transit Railway ("MTR") trackside between 1997 and 2006. Details sought included date, time and location of the incident; age and gender of the person involved; severity of the incident (i.e. no injury, serious or fatal); and duration of train service disruption.

2. In July, ETWB simply referred the complainant to a former press release containing aggregate information on incidents involving passengers falling onto MTR tracks each year from 1997 to 2005.

3. The complainant requested ETWB to reconsider his request, as it was impossible to extract the information he needed from the aggregate data.

ETWB's Refusal

4. In August, ETWB replied that disclosure of the information requested might lead to identification of the deceased, the injured or their families. It did not consider the public interest in disclosure to outweigh the harm or prejudice that might result. It, therefore, refused the request under paragraph 2.15 of the Code on Access to Information ("the Code"), which states that *"disclosure of information about any person (including a deceased person)… may be refused, unless… the public interest in disclosure outweighs any harm or prejudice that would result"*.

First Complaint

5. In September, the complainant complained to this Office.

6. After due inquiries, we considered ETWB's refusal not justified, as the requested information on its own would not lead to identification of the deceased, the injured or their relatives.

Revived Request

7. In January 2007, the complainant revived his request for the information. In March, ETWB refused his request on similar grounds.

Second Complaint

8. The complainant then complained again to this Office. In April, The Ombudsman initiated a full investigation.

Our Findings and Comments

9. The Code enshrines Government policy to be transparent and accountable, thus making available as much Government-held information as possible to the public.

10. Paragraph 2.15.6 of the Guidelines to the Code provides that the restriction on disclosing personal information to third parties does not apply to information concerning an individual from which it is not reasonably practicable to identify the individual, e.g. anonymised statistical data.

11. The complainant's request was for anonymised information. It would not be reasonably practicable to ascertain or deduce from such information alone the identity of the individuals concerned.

Conclusion and Recommendation

12. The Ombudsman, therefore, concluded that ETWB's approach was over-cautious and in breach of both the letter and the spirit of the Code. The complaint was substantiated.

13. The Transport and Housing Bureau, which took over from ETWB in July 2007, agreed to our recommendation to release the information to the complainant.

A case of misapplication of the Code

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Summaries of Selected Cases on Code on Access to Information

LANDS DEPARTMENT (“Lands D”)

Case No. OMB 2007/3856(I)

Access to information – failing to disclose the identity of applicants granted approval for roadside publicity materials

The Complaint

The complainant asked a District Lands Office (“DLO”) of Lands D for the names of certain individuals or organisations whose roadside non-commercial banners had been approved for display by DLO. His request was rejected on “privacy” grounds.

Lands D Practice

2. In response to a public complaint or enquiry, DLO would inform the complainant or enquirer whether a display had been approved, but not the name of the individual or organisation concerned.

Compliance with the Code

3. Under Government’s Code on Access to Information (“the Code”), if a piece of information is held for or provided by a third party under an explicit or implicit understanding that such information would not be further disclosed, the department concerned may refuse a request for such information.

4. Lands D’s Application Form for Display of Roadside Non-commercial Publicity Materials states that “the information provided by the applicant will only be used for processing the application…. Such information will not be disclosed in any form to any person, organisation or Government department.”

5. Lands D’s refusal of the complainant’s information request on “privacy” grounds, was, therefore, in compliance with the Code.

Need for Disclosure

6. Nevertheless, as the contents of roadside non-commercial publicity materials are usually of public interest and could generate public enquiries or complaints, we considered it necessary to disclose the names of individuals or organisations whose displays have been approved.

Improvement Measure

7. Lands D has accordingly amended the application form to require applicants to consent to disclosure of their names in the public interest.

A case of need for greater transparency